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# FOIP FOLIO

SASKATCHEWAN



**November 2006**

## ANNUAL REPORT 2005-2006

On November 16, 2006 our Annual Report for 2005-06 was released. This Report reviews activities of the Office of the Information and Privacy Commissioner (OIPC) for the last year. It also notes that of the six major recommendations from last year's *Privacy and Access - A Saskatchewan Roadmap for Action*, there has been no action from Government on four of them. These are:

- review and update our first generation *The Freedom of Information and Protection of Privacy Act* (FOIP);
- consolidate FOIP and *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) into a single law;
- extend privacy protection to employees in the private sector; and
- address the issue of privacy and public registries.

In 2005-06 the OIPC received more than 1,333 inquiries from individuals and organizations seeking assistance and information. This was an increase of 11.45% over the previous year. In 2005-06 the OIPC provided 166 education presentations. Our office had approximately 120 open files dealing with a breach of privacy complaint or review of an access decision. Eight-eight of those files were opened in 05-06. We opened 117 files with respect to advice and consultation provided to public bodies on proposed projects, programs or legislation.

The Annual Report is available at the website: www.oipc.sk.ca under the tab *Annual Reports*.

## JOB OPPORTUNITY

Our plan to hire a new Portfolio Officer later in this fiscal year has now been accelerated. A Portfolio Officer is an investigator, researcher and educator in our office. The competition concludes on November 24, 2006. You can find full particulars of this position at our website: www.oipc.sk.ca under the *What's New* tab.

## EMPLOYEE CONTACT INFORMATION & HOW TO TREAT IT

Questions are often raised about what is and is not personal information about employees. For purposes of the *Personal Information Protection and Electronic Documents* Act (PIPEDA), personal information about employees is not typically covered at all unless the employee works in a federally regulated business (e.g. airlines, banks, telecommunications or inter-provincial trucking). In Saskatchewan if PIPEDA applies to your organization, it normally captures your customer information, but not your employee information. Even in those cases where PIPEDA is engaged, there is the 'business card exemption'. In other words the business address, phone number or job title of an employee is not caught by the definition of personal information. Note that the business card exemption in PIPEDA does not catch the business email address of the employee.

In the case of employees of a body subject to either FOIP or LA FOIP, our office takes the position that the name, job title, business phone or email is not personal information. For employees in the private sector that are not covered by PIPEDA, there is no applicable privacy law other than *The Privacy Act* that permits an action in the Court of Queen's Bench for damages arising from "an unreasonable invasion of privacy".

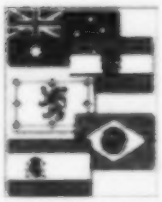
## ONTARIO DIVISIONAL COURT DECISIONS ON COMMISSIONER'S POWERS

Two recent Ontario Divisional Court decisions have affirmed that even though the Information and Privacy Commissioner has no explicit power to investigate and report on privacy complaints, she has the authority as part of her "legislative" functions to investigate and report on privacy complaints. Furthermore, decisions of the Commissioner are protected by "parliamentary privilege" and are not subject to judicial review because they fall within her general oversight and reporting mandate as an Officer of the Legislature.

The decisions are:

*David* v. *Ontario (Information and Privacy Commissioner)*, [2006] O.J. 4350 (Div.Ct.)
*David* v. *Ontario (Information and Privacy Commissioner)*, [2006] O.J. 4351 (Div.Ct.)
*Reynolds* v. *Ontario (Information and Privacy Commissioner)*, [2006] O.J. 4356 (Div.Ct.)

## INTERNATIONAL DATA & PRIVACY COMMISSIONERS CONFERENCE TO CANADA IN '07



2007 will likely be recorded as a high water point in the evolution of privacy in this nation. In September, 2007, Montreal will be the host city for *Privacy Horizons - Terra Incognita*, the International Data Protection and Privacy Commissioners' Conference. This is easily one of the most important events of its kind in the world. It is usually attended by Privacy Commissioners from all parts of the globe. It also attracts many commentators, civil society organization representatives, academics, lawyers, judges, consultants and vendors of privacy enhancing technologies.

Coordinated with *Privacy Horizons – Terra Incognita* is a series of other conferences in other parts of Canada including:

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| Toronto: | *The Privacy Prognosis in an Era of New Health Information Technology*, Sept. 24, 2007 |
| Vancouver: | *Private Sector Privacy in a Changing World- An Educational Forum for Businesses and Non-Profits*, Sept. 20 & 21, 2007 |
| Quebec City: | Francophonie Privacy Conference |

## BILL 20, MANDATORY GUNSHOT AND STAB WOUND REPORTING ACT

The OIPC has identified a number of concerns and questions with respect to *Bill 20, The Mandatory Gunshot and Stab Wounds Reporting Act*. That Bill received First Reading in our Legislative Assembly on November 6, 2006. Consistent with our mandate to provide advice and commentary to the Assembly, the OIPC has submitted to the Assembly a written analysis of Bill 20. For a copy of our letter to the Speaker of the Legislative Assembly with our analysis of Bill 20, visit our website: www.oipc.sk.ca under the *What's New* tab.

## A REPORT ON THE SURVEILLANCE SOCIETY

**Mr. Richard Thomas**, United Kingdom Information Commissioner, recently released a detailed report – 'A Surveillance Society' – that examines surveillance in 2006 and projects forward ten years to 2016. Commissioner Thomas states that: "Two years ago I warned that we were in danger of sleepwalking into a surveillance society. Today I fear that we are in fact waking up to a surveillance society ... [U]nseen, uncontrolled or excessive surveillance can foster a climate of suspicion and undermine trust." The 98 page report does a masterful job of considering health and medicine; work and employment; public services; citizenship; crime and justice; communications; infrastructure; and borders. The Report, A Summary Report and the Appendices can be accessed at www.ico.gov.uk.

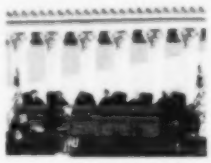
## PRAIRIE HEALTH INFORMATION CONFERENCE

If you work with *The Health Information Protection Act* (HIPA), we encourage you to mark April 16-17, 2007 in your calendars now! On those dates, Regina will host the first *Prairie Health Information Privacy Day 2007 - Demystifying Health Information Privacy Challenges*. This is an initiative hosted by the Manitoba Ombudsman and the Information and Privacy Commissioners for Alberta and Saskatchewan.

This conference will draw on real case examples from all three prairie provinces, many years of experience in the health privacy arena and practical advice from experts in the field. Tentative topics may include:

- Recent cases: stories from the trenches
- Who is responsible for organizational health privacy?
- Can privacy & health research co-exist?
- Refusal to comply with the law
- Breach notification
- Information management issues
- Access requests versus permissible disclosures
- Commissioners' Panel – Current and future issues surrounding the secondary usage of health information

## FEDERAL COURT INTERPRETS PIPEDA



**Mr. Justice Teitelbaum** of the Federal Court issued his Order in Jacques Rousseau v. Jeffery P. Wyndowe (Psychiatric Assessment Services Inc.) and the Privacy Commissioner of Canada on October 30, 2006 (Federal Court File No. T-711-05). The Complainant sought access under PIPEDA to notes made by a physician who conducted an independent medical examination (IME) on behalf of an insurance company. The Privacy Commissioner had concluded that the doctor's notes contained the Complainant's personal information and that neither the solicitor-client exception in s. 9(3)(a) of PIPEDA nor the exception for information generated in the course of a formal dispute resolution process in s. 9(3)(d) applied. The Complainant applied under s. 14 for a Federal Court hearing. Justice Teitelbaum agreed with the conclusions of the Privacy Commissioner. The Court found that this is so, notwithstanding arguments that doctors should not have a duty to allow persons to access their notes made in the course of IMEs. PIPEDA is clear that persons should be given access to their personal information and PIPEDA does not provide an exception for doctors' notes.

## SASKATCHEWAN GOVERNMENT MAKES MAJOR IMPROVEMENT TO YOUTH DRUG DETOX LAW

*Bill 6, The Youth Drug Detoxification and Stabilization Amendment Act* responds to a major concern the OIPC noted last spring. We are pleased that Minister Addley has now brought into the Act a number of the features from HIPA. The result is that parents and youth will now have a right to seek access to the personal health information of the youth and to request that errors be corrected. If they are not satisfied with the action of the health information trustee, they can ask the OIPC to review the matter. There will also now be a clear obligation on the trustee to safeguard youths' information.

## THE BLUENOSE, LOBSTERS AND RTK?

Congratulations to **Darce Fardy** and the Directors of a new advocacy group on our east coast. The Right to Know Coalition of Nova Scotia has now been launched. Darce was the former Review Officer in that province and a long time advocate of open government. We encourage you to check out their website at www.nsrighttoknow.ca. The British Columbia Freedom of Information and Privacy Association (FIPA) has demonstrated, on the west coast, just how effective this kind of citizen group can be in promoting the public's right to know.

## GOVERNMENT-TO-GOVERNMENT PERSONAL INFORMATION SHARING AGREEMENTS

The Institute for Citizen-Centered Service (Institute) has just produced what should be a very useful tool for public sector organizations. This is a set of *Guidelines for Best Practice* and is available at http://www.iccs-isac.org/eng/privacy.html. This tool is intended to address the need to better manage privacy risks and to achieve greater transparency, control and accountability. That need was documented in a recent major audit of transborder data flows conducted on the Canada Border Services Agency by **Jennifer Stoddart**, the federal Privacy Commissioner. Her report is available at http://www.privcom.gc.ca/information/pub/ar-vr/cbsa_060620_e.asp-001. The Institute indicates that these guidelines should provide strategies to minimize privacy and security risks within personal information sharing agreements.

SASKATCHEWAN



## FUTURE EVENTS

**November 27-28, 2006** – *3rd Annual Electronic Health Records and Information Systems*, Toronto, Ontario (visit www.insightinfo.com)

**December 6, 2006** – SK OIPC Brown Bag Luncheon Workshop (12:10 p.m. – 12:50 p.m.). Topic: "Severing made easy or at least a lot easier!", 503-1801 Hamilton Street, Regina (call (306) 787-8350 for details or to register)

**January 10, 2007** – SK OIPC Brown Bag Luncheon Workshop (12:10 p.m. – 12:50 p.m.). Topic: "A FOIP Love Triangle! The Public Body, The Applicant and the Third Party (FOIP Part V)", 503-1801 Hamilton Street, Regina (call (306) 787-8350 for details or to register)

**January 29-30, 2007** – Health Information Privacy and Security, Toronto, Ontario (visit http://www.insightinfo.com/conferences/upcoming.cfm)

**February 21, 2007** – *Assessing Current Privacy Issues*, Ottawa, Ontario (visit www.rilevis.com/seminars)

**February 22-23, 2007** – *Privacy Compliance – Practical Solutions for Meeting your Obligations* – Calgary, Alberta (visit www.CanadianInstitute.com for details)

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